SANJIV

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2027 OF 2006

Gopal A. Vazirani ....Petitioner

Vs.

The State of Maharashtra & Anr. ....Respondents

Mr. I. O. D. Goswami & Mr. A. K. Prajapati for petitioner.

Ms. M. H. Mhatre, APP for the State.

CORAM : SMT. RANJANA DESAI, J.

DATE : 7TH DECEMBER, 2006.

P. C.:-

1. In this petition, the petitioner's prayer is that order issuing process, passed by the Metropolitan Magistrate, 29th Court, Dadar in C.C. No. 31/SF/2006 be quashed. It appears that being aggrieved by the issuance of process, petitioner had filed a revision application in the Court of Sessions at Bombay. By order dated 07/08/2006 the

Sessions Court has rejected the revision application. That order is also challenged in this writ petition.

2. The petitioner is the Managing Director of a company known as M/s. WNI Cranes Ltd. situated at Village Road, Bhandup (W), Mumbai. It appears that on 14/03/2006 at about 9.15 a.m., an accident took place in the assembly shop of the petitioner's factory. In that accident two persons were injured. One of them, Shri Namdeo V. Dhumal succumbed to injuries. The instant complaint was, therefore, filed by the Deputy Director, Industrial Safety and Health, Mumbai alleging offences under Section 7-A (2) (b) and 7-A (2) (c) of the Factories Act 1948 punishable under Section 92 of the said Act.

3. I have heard the learned counsel appearing for the petitioner. He contended that the complaint does not disclose any offence against the petitioner and hence, this court should quash it. He submitted that all necessary care had been taken by the petitioner to ensure safety of the workers. Care was taken to maintain plant and system of work in the factory, so that there will be no risk to the health

of workers. It was, therefore, wrong for the respondent to file the instant complaint against the petitioner. Learned counsel further submitted that respondent-2 had no authority to file the complaint. He submitted that the company has made ex-gratia payment to the wife of the deceased. The learned counsel further submitted that the company wants to employ the son of the deceased when he attains majority on compassionate ground. He submitted that all these factors may be taken into account and the impugned orders be quashed.

4. In my opinion, whether the petitioner had taken due care to maintain plant and system of the factory, so as to ensure safety of the workers is a question of fact. That can be decided only after the evidence is adduced. Similarly, whether respondent-2 was authorised to file the complaint can only be established by leading evidence. This is not a case where it can be said that the allegations made in the complaint even if taken at their face value, do not disclose any offence. Ex-gratia payment made to the wife of the deceased and willingness of the company to give employment to the

son of the deceased will not absolve the petitioner of the offence alleged against him.

5. In the circumstances, in my opinion, the present petition cannot be entertained. I may make it clear that I have not expressed any opinion on the merits of the case at this stage. If any application for exemption is made against the backdrop of the above facts, the learned Magistrate may consider it sympathetically and in accordance with law. The writ petition is dismissed.

(SMT. RANJANA DESAI, J)